

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MAYTE RODRIGUEZ,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION,

Defendant.

Case No. 24-cv-01413-JSW

**ORDER DENYING PLAINTIFF'S  
MOTION TO REMAND AND SETTING  
INITIAL CASE MANAGEMENT  
CONFERENCE**

Re: Dkt. No. 7

Now before the court is Plaintiff Mayte Rodriguez's ("Plaintiff") motion to remand. The Court has considered the parties' papers, relevant legal authority, and the record in this case. For the reasons stated below, the Court DENIES Plaintiff's motion to remand.

**BACKGROUND**

On September 24, 2021, Plaintiff alleges she slipped and fell on smashed produce at Defendant Costco Corporation's ("Defendant") location at 4801 Central Avenue in Richmond, California. Plaintiff alleges that the spilled produce was not timely cleaned up and caused her to suffer significant injuries to her hip and knee. According to a pre-suit settlement demand letter, to treat those injuries, Plaintiff underwent physical therapy, right knee arthroscopy, and medial plica removal. (Declaration of Nathaniel L. Dunn ("Dunn Decl."), ¶ 6, Ex. B.)

Plaintiff's pre-suit settlement demand listed the cost of her medical bills as \$62,725.77. Her demand for damages included past pain and suffering, future medical expenses, and future pain and suffering. (*Id.*, ¶ 7, Ex. B.) On August 17, 2023, Plaintiff filed a Complaint in Contra Costa Superior Court ("Superior Court"), in which she did not allege a total amount of damages but checked off the categories of wage loss, hospital and medical expenses, general damages, loss of earning capacity, future medical expenses, future wage loss, and future general damages, with

no specific amount provided within any of those categories of damages. (*Id.*, ¶ 7, Ex. A.) On January 31, 2024, Plaintiff filed a case management statement, in which she alleged that her medical expenses were approximately \$70,000.00. (*Id.*, ¶ 11, Ex. C.)

On February 15, 2024, Defendant timely filed an Answer to Plaintiff's Complaint. On March 8, 2024, Defendant filed a Notice of Removal to federal court and asserted the Court had diversity jurisdiction under 28 U.S.C. Section 1332. On April 5, 2024, Plaintiff timely filed a Motion to Remand to Superior Court arguing that this Court does not have subject matter jurisdiction because Defendant had failed to establish that the amount-in-controversy is greater than \$75,000.

## ANALYSIS

### A. Applicable Legal Standards.

Pursuant to 28 U.S.C. section 1441(a), a defendant may remove any civil action brought in a state court to the district court where such action is pending so long as the court to which the case is removed has "original jurisdiction" over the case. *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003). However, federal courts are courts of limited jurisdiction. *See, e.g., Kokkonen v. Guardian Life Ins. Co. Am.*, 511 U.S. 375, 377 (1994). The party seeking removal has the burden of establishing federal jurisdiction, and the removal statute is strictly construed against removal jurisdiction. *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116-17 (9th Cir. 2004).

A federal court has original jurisdiction where the case concerns an issue of federal law or there is complete diversity between the parties and the amount in controversy exceeds \$75,000. 28 U.S.C. §1441(a). Here, there are no federal claims and the parties do not dispute that there is complete diversity. The jurisdictional issue thus solely concerns whether the \$75,000 amount in controversy requirement has been satisfied.

Plaintiff does not allege an amount in controversy in her Complaint. In the Ninth Circuit, if it is "unclear or ambiguous from the face of a state-court complaint whether the requisite amount in controversy is pled[,] ... a preponderance of the evidence standard" applies. *Guglielmino v. McKee Foods, Inc.*, 506 F.3d 696, 699 (9th Cir. 2007) (citing *Sanchez v.*

1 *Monumental Life Ins. Co.*, 102 F.3d 398, 402 (9th Cir. 1996)). In determining the amount in  
2 controversy under that standard, courts “consider the allegations in the complaint and in the notice  
3 of removal, as well as summary judgment-type evidence.” *Chavez v. JPMorgan Chase & Co.*,  
4 888 F.3d 413, 416 (9th Cir. 2018).

5 The amount in controversy may include, for example, “damages (compensatory, punitive,  
6 or otherwise) and ... attorneys’ fees awarded under fee shifting statutes.” *Gonzales v. CarMax*  
7 *Auto Superstores, LLC*, 840 F.3d 644, 648-49 (9th Cir. 2016); *see also Tanious v. Gattoni*, 533 F.  
8 Supp. 3d 770, 777 (N.D. Cal. 2021). “[T]he amount in controversy ... is determined by the  
9 complaint operative at the time of removal and encompasses all relief a court may grant on that  
10 complaint if the plaintiff is victorious.” *Chavez*, 888 F.3d at 414-15. Courts consider only the  
11 “amount at stake in the underlying litigation, not the likely liability.” *Gonzales*, 840 F.3d at 648.  
12 The amount at stake in the underlying litigation can include estimates of future damages. *Chavez*  
13 888 F.3d at 417 (“the mere futurity of certain classes of damages” does not preclude them from  
14 being included in the present amount in controversy).

15 **B. Defendant Has Met Its Burden to Show the Amount in Controversy Requirement.**

16 Defendant argues that, cumulatively, Plaintiff’s demands for medical costs and for multiple  
17 categories of damages alleged in her settlement documents and in her Complaint satisfy the  
18 amount in controversy requirement. Plaintiff counters that Defendant’s calculations are  
19 “speculative” and argues that if the Court has “any doubt” about removal, then the case must be  
20 remanded. (Motion at 4:18.) Plaintiff also argues that her initial position on medical damages  
21 was merely an “optimistic prediction,” and the Court should not use those figures in assessing the  
22 jurisdictional requirements. (*Id.* at 5:10.)

23 In the Ninth Circuit, a “settlement letter is relevant evidence of the amount in controversy  
24 if it appears to reflect a reasonable estimate of the plaintiff’s claim.” *Cohn v. Petsmart, Inc.*, 281  
25 F.3d 837, 840 (9th Cir. 2002). The *Cohn* court also found it significant that the plaintiff made no  
26 attempt to disavow the settlement demand or to offer contrary evidence despite opportunities to do  
27 so, the settlement demand is entitled to greater weight. *Id.*

28 Here, Plaintiff’s estimates for medical expenses in the demand latter and in the settlement

conference paperwork—\$62,725.77 and \$70,000 respectively—“appear to reflect a reasonable estimate of [her] claim” given the nontrivial injury she alleges. *Id.* Plaintiff stated that she underwent right knee arthroscopy and medial plica removal as well as physical therapy. Plaintiff’s counsel also later confirmed via email that Plaintiff had undergone arthroscopic knee surgery. (Dunn Decl., ¶¶ 5,14.) Plaintiff has discussed specific medical procedures on her knee and that she has had physical therapy because of the injury. (*Id.*, ¶ 5.) Moreover, Plaintiff had ample opportunity “to disavow the settlement demand or offer contrary evidence” before moving to remand but did not do so. *Cohn*, 281 F.3d at 840. The Court thus considers the medical expenses as part of “the amount at stake in the underlying litigation.” *Gonzales*, 840 F.3d at 648.

Plaintiff alleges multiple additional categories of damages, and these additional categories cumulatively satisfy the remaining amount in controversy. Courts in this District often aggregate multiple categories of damages to determine whether a plaintiff has satisfied the amount in controversy requirement. *See, e.g., Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1035 (N.D. Cal., 2002) (finding that the jurisdictional minimum had been met based on an aggregation of a \$23,000 demand in a settlement letter plus a substantial lost wages claim); *see also Tanious*, 533 F. Supp. 3d at 778 (aggregating claims for lost wages, punitive and compensatory damages to reach the jurisdictional minimum).

Here, having considered Plaintiff’s claimed medical expenses, Plaintiff is between \$5000 and \$12,275 short of satisfying the amount in controversy requirement before the Court considers other categories of damages. In her Complaint, Plaintiff checked the wage loss, medical and hospital expenses, general damages, loss of earning capacity, and “other damage” boxes. (Dunn Decl., ¶ 9.) In the “other damage” box she listed “future medical expenses, future wage loss, and future general damages” as categories of damages. *Id.* In describing those general damages, Plaintiff stated in her demand that the injury “substantially impaired” her work proficiency, enjoyment of life, and engagement in routine activities. (*Id.*, ¶ 8.) Plaintiff’s period of wage loss alone, according to the Complaint, may extend to 30 months or more. A 30-month period of wage loss could, by a preponderance of the evidence standard, satisfy the remaining \$5000-\$12,275 required to meet the jurisdictional threshold. *See, e.g., Tanious*, 533 F. Supp. 3d at 778 (“Not only

1 does Plaintiffs' claim for lost wages exceed \$75,000 on its own, but Plaintiffs' other claims for  
2 punitive and compensatory damages further support the finding that the amount-in-controversy  
3 requirement is met.").

4 Defendant also highlights jury verdicts in cases involving knee injuries that result in  
5 substantial damages awards ranging from roughly \$80,000 to more than \$500,000. (Dunn Decl.,  
6 ¶¶ 15-19.) "[S]ettlements and jury verdicts in similar cases can provide evidence of the amount in  
7 controversy, [but] the cases must be factually identical or, at a minimum, analogous to the case at  
8 issue." *Mireles v. Wells Fargo Bank, N.A.*, 845 F. Supp. 2d 1034, 1055 (C.D. Cal., 2012). Courts  
9 do not require that comparable damage awards be "perfectly analogous." *Simmons*, 209 F. Supp.  
10 2d at 1034. Here, in addition to her knee injury, Plaintiff alleges multiple other kinds of bodily  
11 injury, including hip and knee pain. (Dunn Decl., ¶¶ 5-6.) That allegation strengthens the analogy  
12 to the verdicts cited by Defendant. The comparable jury verdicts corroborate Defendant's other  
13 arguments that, by a preponderance of the evidence standard, the amount in controversy  
14 requirement has been met.

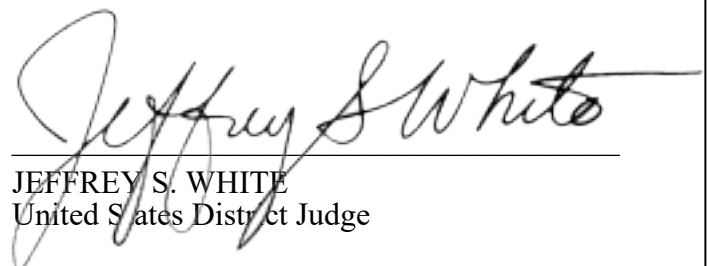
15 In sum, Defendant has met the burden of establishing that the amount in controversy  
16 requirement has been met. The reasonable medical expenses alleged in the settlement document  
17 aggregated with the other categories of damages Plaintiff alleges satisfy the \$75,000 jurisdictional  
18 minimum.

### 19 CONCLUSION

20 For the reasons stated above, the Court DENIES Plaintiff's motion to remand. The parties  
21 shall appear on December 6, 2024, at 11:00 a.m. for an initial case management conference. The  
22 parties' joint case management conference statement shall be due by November 29, 2024.

23 **IT IS SO ORDERED.**

24 Dated: October 24, 2024

25   
26 JEFFREY S. WHITE  
27 United States District Judge  
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